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IN THE

Supreme Court of the United States

October Term 1976

No. 76-1640

GENERAL ATOMIC COMPANY, A partnership composed of Gulf Oil Corporation and Scallop Nuclear, Inc.,

Petitioner,

vs.

THE HONORABLE EDWIN L. FELTER, District Court Judge for the First Judicial District, Santa Fe County, New Mexico,

Respondent.

GENERAL ATOMIC COMPANY, A partnership composed of Gulf Oil Corporation and Scallop Nuclear, Inc.,

Petitioner,

vs.

UNITED NUCLEAR CORPORATION,

Respondent.

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW MEXICO

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Statement

In its Opposition, UNC* argues:

(a) Although GAC and its constituent partners remain subject to a state court Injunction barring it from asserting claims, cross claims or third party

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* "UNC" and other terms used in this Reply are defined in the Petition.

claims relating to the subject matter of the Santa Fe litigation against UNC in federal courts and in arbitrations ordered by federal courts, this case somehow is moot because one of the actions brought by the utilities against GAC has been dismissed (Opposition, pp. 3-6); and

(b) Although GAC has consistently asserted the right to compel UNC to arbitrate and has repeatedly complained that the Injunction will prejudice its rights in ongoing, as well as contemplated, arbitration proceedings, GAC and its partners are barred from pressing these claims before federal courts because it failed to cite the Federal Arbitration Act in proceedings below and in its Prior Petition which was granted by this Court (Opposition, pp. 6-11).

UNC erects these procedural hurdles to review by this Court—just as it raised other erroneous procedural objections to GAC's Prior Petition*—in a continuing attempt to thwart this Court's review of an injunction that is plainly inconsistent with the Supremacy Clause of the Constitution and this Court's decision in *Donovan* v. *Dallas*, 377 U.S. 408 (1964). All UNC's arguments lack merit.

Argument

GAC's Claim is Not Moot

Citing only *DeFunis* v. *Odegaard* (Opposition, p. 5), UNC suggests that GAC's claim is moot and that this Court therefore lacks jurisdiction to entertain GAC's claim. UNC's position is based upon a false factual premise, receives no support from the *DeFunis* decision* and is contrary to established principles of mootness law.

* This Court granted the Prior Petition, vacated and remanded the case to the Supreme Court of New Mexico for a determination whether its judgment was based on state or federal grounds. The New Mexico Supreme Court unequivocally rejected UNC's position that the New Mexico Supreme Court's judgment had been based on state grounds. *Compare* Petition, Appendix D, pp. 7-10, and Opposition, pp. 2, 20-29, *with* Prior Opposition, pp. 3-5.

As factual support for its position that the Injunction no longer has any effect on GAC's right to institute an action in federal court, UNC asserts that "[n]owhere . . . does GAC claim, or even imply, that it would now institute additional litigation" (Opposition, p. 3). UNC then argues that the action by I&M in the United States District Court for the Southern District of New York was the only federal suit in which GAC's rights as a defendant have been prejudiced by the Injunction and that the dismissal of that action moots GAC's claim that the Injunction unconstitutionally interferes with its ability to defend itself in other federal proceedings (Opposition, pp. 4-5).

UNC's statements are erroneous. UNC is well aware that GAC would assert claims against UNC in federal proceedings but for the Injunction—indeed, UNC obtained the Injunction precisely to prevent GAC from asserting such claims. As UNC stated in the Prior Opposition (p. 11), "GAC, in its response to the application for injunction, admitted its intention to join UNC in an arbitration action between Duke Power and GAC and in any actions or arbitration proceedings between GAC and any of the utilities" (*see* Prior Opposition, p. 19). The Supreme Court of New

* This case bears no relationship to *DeFunis*. In *DeFunis* the petitioner, who challenged a law school's admission procedure, had been admitted to law school pursuant to an injunction. At the time of this Court's consideration of the case, petitioner was in his last term of law school and had been guaranteed the right to complete his course of studies. The Court found that "DeFunis will never again be required to run the gauntlet of the Law School's admission process, and so the question is certainly not 'capable of repetition' so far as he is concerned." *DeFunis* v. *Odegaard*, 416 U.S. 312, 319 (1974).

By contrast, GAC is now and will be for some time in the midst of numerous federal and state lawsuits and arbitration proceedings involving UNC and four utilities with respect to approximately $1 billion in disputed uranium fuel contracts. Not only are GAC's rights currently being prejudiced by the Injunction but its rights are certain to be prejudiced in the future as the litigation continues to unfold (*see* Petition, pp. 11-15 and *infra*, pp. 4-13).

Mexico found that UNC requested and obtained the Injunction "after learning that GAC would try to bring UNC into the I&M suit and *the Duke arbitration case and any other suit involving the utilities.*'"* The Duke arbitration was permitted to proceed in the absence of UNC over GAC's objection only after a United States District Court found that UNC, as a guarantor of the Duke contract, was a proper, although not necessary, party that could not be joined because of the Injunction.** *General Atomic Co.* v. *Duke Power Co.*, 420 F. Supp. 215, 217 (W.D.N.C. 1976).

GAC's Petition and Prior Petition likewise demonstrate that GAC has been barred from instituting federal proceedings to compel UNC to arbitrate in the Commonwealth and Duke disputes and that GAC would seek to do so in the absence of the Injunction (*see* Prior Reply, p. 8; Petition, p. 15 n.*). The Petition in particular emphasized that GAC is suffering ongoing harm because of its inability to bring UNC into the arbitration required by the North Carolina federal court. This injury to GAC might still be rectified or mitigated in that proceeding or in related litigation if the Injunction were overturned. A similar situation obtains in the Commonwealth dispute, in which the Illinois federal court directed both GAC and UNC to arbitrate with Commonwealth, but in which the Injunction prevents GAC from seeking in that federal court to compel UNC to arbitrate the disputes between UNC and GAC relating to the Commonwealth contract.

The present posture of the New Mexico action itself refutes UNC's claim of mootness. Proceedings in the New Mexico state court have not yet reached the trial stage. If this Court should determine that the Injunction is

* Petition, Appendix D, pp. 4-5 (emphasis added).

** UNC's attempt to show that it has no contractual relationship with Duke (Opposition, p. 15) is flatly inconsistent with the court's finding that UNC made a "contract" with Duke and remains "a guarantor" of GAC's obligations to Duke. *General Atomic Co.* v. *Duke Power Co.*, 420 F.Supp. 215, 216-17 (W.D.N.C. 1976).

improper, GAC would request the Santa Fe Court to reconsider various procedural rulings which were predicated on the erroneous assumption that the Injunction was valid. Simply as an example, the Santa Fe Court might well on reconsideration grant GAC's motion to dismiss the issues raised by UNC's pleadings regarding GAC's obligations to Commonwealth (*see* Petition, p. 15), recognizing that with GAC no longer enjoined from asserting claims against UNC in the pending Commonwealth arbitration, those issues would best be tried in the single forum where a final, consistent result could be obtained binding on GAC, GAC's customer and GAC's supplier.

In short, UNC's position that a decision by this Court holding the Injunction improper "will have no effect on the rights of either party in this case" (Opposition, pp. 3-4; *see* Opposition, p. 5) plainly is incorrect. It also is rather surprising, in view of UNC's substantial, and thus far successful, efforts to obtain and defend the Injunction in the state courts and to avoid review of the Injunction on the merits in this Court.*

* Even if the Injunction were not now prejudicing GAC in these ongoing controversies, GAC's claims would not be moot. While as GAC stated in its Petition, given the breadth of the Injunction "[i]t is impossible to enumerate in advance all possible occasions in which GAC or its constituent partners may need to exercise their rights to assert claims in federal proceedings" (Petition, p. 20 n.*), the Injunction by its terms restricts their ability, with respect to the subject matter of the Santa Fe litigation, to (a) *sue UNC* in federal court; (b) bring a third party claim against UNC in federal court; (c) *sue UNC* in federal court to compel arbitration; and (d) *sue UNC* in federal court in proceedings to enforce an arbitration award. For example, Detroit might well institute an action against GAC in federal court if it succeeds on its jurisdictional appeal in the New Mexico courts (*see* Petition, pp. 12-13). The harm already caused to GAC and its partners by the Injunction is thus not only "capable of repetition yet evading judicial review" but virtually certain to recur, placing this case squarely within a well recognized exception to the mootness doctrine. *See, e.g., Nebraska Press Association* v. *Stuart*, 427 U.S. 539 (1976); *Roe* v. *Wade*, 410 U.S. 113, 124-25 (1973); *Dunn* v. *Blumstein*, 405 U.S. 330, 333, n.2 (1972); *Moore* v. *Ogilvie*, 394 U.S. 814, 816 (1969); *Carroll* v. *Princess Anne*, 393 U.S. 175, 178-79 (1968); *United States* v. *W.T. Grant Co.*, 345 U.S. 629, 632-33 (1953); *Southern Pacific Terminal Co.* v. *ICC*, 219 U.S. 498, 515 (1911).

GAC is Not Precluded from Claiming that the Injunction Deprives It of the Right to Resort to Federal Court to Enforce Its Arbitration Rights

UNC argues that this Court may not consider the fact that one effect of the Injunction is to bar GAC and its partners from instituting or asserting claims in federal proceedings to enforce arbitration agreements or awards. UNC relies heavily on the fact that GAC has not cited the Federal Arbitration Act in the state courts or in the Prior Petition.

UNC's argument is baseless.

First, UNC concedes (*see* Opposition, pp. 2-4) that GAC has consistently asserted before the New Mexico state courts and in the Prior Petition that the Injunction is unconstitutional and improper because:

> (a) it bars GAC and its constituent partners from instituting federal proceedings against UNC relating to the subject matter of the Santa Fe litigation; and
>
> (b) it bars GAC and its constituent partners from instituting third party claims against UNC when they are sued in federal proceedings with respect to the subject matter of the Santa Fe litigation.

Federal lawsuits (or third party claims in federal proceedings) to compel UNC to participate in arbitration of the uranium claims clearly are within the scope of the questions GAC has consistently raised.

Second, GAC has specifically raised the pernicious effect of the Injunction on its arbitration rights at every stage of the proceedings leading to the Petition. It did so before Judge Felter who issued the Injunction,* before the Supreme Court of New Mexico,* and in the Prior Petition before this Court.** Since the Supreme Court of New Mexico found that the Injunction was requested and issued in part because UNC "learned that GAC would try to bring UNC into . . . the Duke arbitration case", there can be no question that the state courts, in upholding the Injunction, were aware of, and rejected, GAC's claim that it was entitled to assert claims against UNC in arbitration proceedings.† Indeed, since UNC used GAC's expressed intention of joining UNC in the Duke arbitration to convince the New Mexico courts to issue the Injunction, UNC should not be heard to say that GAC's arbitration rights cannot be considered in reviewing the validity of the Injunction.

Third, having conceded that GAC has demanded arbitration against it, UNC then goes to great lengths to show that the Injunction did not bar GAC from asserting arbitration claims *in the New Mexico trial court* (Opposition, pp. 7, 18). There is no question, however, that the Injunction does bar GAC from initiating any *federal* action to enforce its arbitration rights against UNC. And because of the

* *See* Prior Reply, Appendix D, and GAC Response to Motion for Preliminary Injunction and attached Affidavit of A.A.H. Koch, Manager, Special Projects, Uranium and Light Water Fuel Division of GAC, dated March 23, 1976. (A copy of the Response has been lodged with the Clerk of this Court).

* Brief of Petitioner GAC in the Supreme Court of New Mexico, pp. 11-12; Reply Brief of Petitioner GAC in the Supreme Court of New Mexico, p. 9. (A copy of these Briefs has been lodged with the Clerk of this Court).

** Prior Reply, pp. 4, n.** and Appendix D, p. 1.

† Nothing in the cases cited in the Opposition (*see* pp. 9-10), suggests that GAC, having clearly and unequivocally raised the effect of the Injunction on arbitration proceedings, should be precluded from asserting it now. In *Michel* v. *Louisiana,* 350 U.S. 91 (1955), the Court sustained a state court decision that the petitioner had waived his objection to the composition of the Grand Jury by failing to object within the time allowed by state statute. In *Brown* v. *Allen,* 344 U.S. 443, 480 (1953), the Court stated that evidence known to the defendant and withheld in state criminal proceedings could not later be used to support a federal habeas corpus petition. And *F.D. Rich Co.* v. *Industrial Lumber Co.,* 417 U.S. 116, 121, n.6 (1974), and *Irvine* v. *California,* 347 U.S. 128, 129 (1954), involved briefing and argument of new and separate issues not even hinted at in the petitions granted by this Court.

pending utility arbitrations, *federal* proceedings, in forums outside New Mexico, are necessary to enforce GAC's arbitration rights.

GAC's demand for arbitration against UNC (reproduced in Appendix A hereto) sought arbitration of "only those issues which General Atomic is ultimately required to arbitrate with Duke and Commonwealth Edison", pursuant to arbitrations demanded by those two utilities and required by federal courts in North Carolina and Illinois. GAC could not effectively "[prosecute] the demand for arbitration contained in its Answer" in the Santa Fe Court (Opposition, p. 18) for the obvious reason that the Duke and Commonwealth arbitrations are pending in other jurisdictions, pursuant to orders of federal courts.

By limiting GAC to asserting its arbitration claims in the Santa Fe Court, the Injunction deprives GAC of its right adequately to defend itself in ongoing arbitration proceedings by invoking federal court enforcement of its arbitration rights.

Fourth, GAC has consistently argued the Supremacy Clause and *Donovan* issues broadly—in terms of its right of access to federal proceedings. GAC has never purported to enumerate all of the various claims it may be entitled to assert in such proceedings, nor is it required to do so.* The Supremacy Clause and the *Donovan* decision— as GAC has argued vigorously from the outset—entitle GAC to have access to federal court proceedings to assert whatever

* In view of the extremely broad prohibitions of the Injunction—for which UNC is directly responsible—and the complexity of the UNC-GAC-utility disputes—considerably magnified by the effect of the Injunction—it is unfair for UNC to complain that GAC should be required exhaustively to detail all possible respects in which the Injunction conflicts with rights under the Supremacy Clause.

claims it may have, including claims under the Federal Arbitration Act.*

The Injunction is Inconsistent with the Supremacy Clause and This Court's Decision in Donovan

UNC persists in attempting to distinguish *Donovan* on the grounds that jurisdiction *over UNC* had not attached in any federal forum affected by the Injunction when it was issued (Opposition, pp. 28-29). This "distinction" is contrary to both the holding and rationale of *Donovan,* as GAC has repeatedly demonstrated.** Even if UNC's distinction had significance, however, it could not be applied to deprive GAC as an *unwilling defendant* in a federal suit—or in an arbitration conducted pursuant to federal court order—of the procedural and substantive rights that would be available absent the Injunction. The Constitution simply does not permit the state judiciary to deprive a defendant in federal proceedings of the benefits of federal laws, rules and precedents uniformly available to all other federal litigants.

* It should also be noted that although GAC suggested that the Supreme Court of New Mexico permit the parties to file briefs following this Court's remand, the New Mexico Supreme Court did not do so. The lack of briefing in the Supreme Court of New Mexico on remand deprived GAC of an opportunity specifically to brief the Federal Arbitration Act claims and may also explain some of the New Mexico Supreme Court's surprising factual errors. *Compare* Petition, p. 19, n.**, *with* Opposition, pp. 20, 27 n.19.

** GAC has pointed out that in *Donovan* this Court overturned contempt citations based solely on the institution of new federal litigation after an injunction had issued (Prior Petition, pp. 16-19; Prior Reply, pp. 11-12; Petition, pp. 17-18). For the first time, UNC attempts to deal with, rather than ignore, this crucial point. UNC appears to argue (Opposition, p. 25) that *those* contempt citations were perfectly proper but that this Court nevertheless overturned them for unexplained reasons of "judicial administration". This odd supposition appears to assume that *all* of the contempt citations were based on the "erroneous decision" of the Texas Supreme Court that an injunction enjoining *pending* litigation was proper. The plain fact is, however, that the Texas Supreme Court had also explicitly ruled that an injunction could issue against the institution of *new* litigation, *City of Dallas* v. *Dixon,* 365 S.W.2d 919, 926-27 (Tex. 1963), and the injunction against such new litigation was of course predicated on *that* ruling.

UNC also advances the extraordinary assertion that GAC could have protected its rights if it had "expanded" and "restructured" the interpleader action and the Gulf declaratory judgment action so as "to bring the issue presented in the Santa Fe case squarely under one federal roof" (Opposition, pp. 18-20; *see* Opposition, p. 28). UNC's argument is absurd. The avowed purpose of the Injunction was to preclude GAC and its constituent partners from asserting any claims against UNC relating to the subject matter of the Santa Fe litigation anywhere but in the Santa Fe Court. The terms of the Injunction in no way left GAC free to "restructure" or "expand" the two federal actions.

The terms of the Injunction permitted only "Gulf Oil Corporation" to prosecute the declaratory judgment action, which in any event concerned only the narrow issue of the validity of the release given by UNC to Gulf, an issue in which the utilities were not involved (Petition, Appendix A, p. 3). And the terms of the Injunction permitted only "the prosecution of [the] appeal" in the interpleader action, which had been dismissed for lack of statutory jurisdiction *before the issuance of the Injunction (Id.).** Thus, GAC had no federal forum "in which all of its claims could have been presented" as asserted by UNC (Opposition, p. 28).

But the most important point is that UNC's argument misconstrues GAC's position. Although GAC would much prefer a single forum in which resolution of all issues could be binding on all parties (and actively sought such a forum until successfully resisted by UNC and the utilities), it is now painfully apparent that GAC will be a defendant in multiple proceedings raising important issues identical

* In any event, GAC could not have asserted claims therein based on diversity of citizenship between GAC and UNC—a fact UNC relied on to prevent removal of the Santa Fe action (*see* Prior Petition, p. 9; Prior Opposition, p. 9 and n.7).

to those in the New Mexico state court litigation. Unless UNC can be made a party in each of these proceedings, there is no guarantee that UNC will be bound by adjudications therein, and there is of course no assurance that the issues will be resolved in the same way as in the Santa Fe Court (Prior Petition, pp. 13-15; Prior Reply, pp. 9-11; Petition, pp. 8, 20-22).

It is simply sham for UNC to suggest to this Court that the issues raised in the Santa Fe action are unrelated to the disputes between the utilities and GAC (Opposition, pp. 29-31).* One of UNC's basic positions in Santa Fe is that even if it remains obligated to GAC under the 1973 Uranium Supply Agreement (which it denies), its obligations to deliver uranium to GAC are limited to whatever amount of uranium GAC is obligated to deliver to the utilities, including Commonwealth and Duke.** Thus, UNC's

* UNC asserts that Gulf agreed to indemnify UNC against claims and liability under UNC's guaranty of the utility contracts (Opposition, pp. 15-17). UNC omits to mention that Gulf and UNC specifically *exempted* from such indemnity "anything resulting by reason of any breach by UNC" of, *inter alia*, the 1973 Uranium Supply Agreement (listed in Exhibit C to the Buy-out Agreement). Of course, it is precisely UNC's breach of the 1973 Uranium Supply Agreement that is at the heart of the entire controversy.

** UNC points out (Opposition, pp. 14-15) that the 1973 Uranium Supply Agreement contains not only a "requirements" (Art. IV) but also a "fixed supply" (Art. V) UNC delivery obligation. UNC omits to mention that the "fixed supply" provision was insisted on by UNC (before the rise in the market price of uranium), in order that UNC might be assured of a market for the output of its mining operations with respect to utility uranium requirements which in 1973 were scheduled for delivery after 1978.

While Article IV obligates UNC to deliver uranium to GAC strictly on the basis of utility requirements and Article V obligates UNC to deliver uranium to GAC regardless of utility requirements, the utilities in fact assert that they require both Article IV and Article V uranium and insist on delivery of such uranium to them. At the same time, UNC asserts that it is not obligated to deliver either Article IV or Article V uranium to GAC because the utilities do not require or are not entitled to such uranium. These conflicting claims by UNC and the utilities concerning the requirements and entitlements of utilities to such uranium represent critical issues common to all of the proceedings against GAC as to which GAC faces the threat of inconsistent adjudication.

Amended Complaint alleges that "as shown by [the 1973 Uranium Supply Agreement], [UNC] was only to furnish those requirements of utilities for uranium for the purpose specified in the contracts with the utilities" and indeed alleges that it is fraudulent for GAC to assert that UNC is required "to deliver the uranium whether or not said uranium is required to be delivered to the utilities" (Amended Complaint, Count I, ¶ 56).* UNC further contends that the utilities are not entitled to obtain delivery of uranium pursuant to the utility contracts (*i.e.*, the very issue involved in the arbitrations) and that UNC is therefore excused from delivering any uranium under either the utility contracts or the 1973 Uranium Supply Agreement by reason, *inter alia*, of the fact that certain utilities obtained deliveries of uranium to which they were not entitled, of undue delivery deferrals, of mutual mistake of fact and commercial impracticability based upon increases in uranium prices, and of force majeure conditions (*see, e.g.*, Amended Complaint, Count I, ¶ 63, Count II, ¶¶ 2-8).**

It is also false for UNC to suggest that there are no controversies between UNC and the utilities (Opposition, p. 19). There is litigation pending between UNC and three of the four utilities.†

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* A copy of the Amended Complaint has been lodged with the Clerk of this Court.

** UNC allegations to the effect that it is entitled to negotiate independently with the utilities as to terms, price and quantity of uranium deliveries, and to full market price for uranium under the I&M contract based upon changes in conditions assumed by the parties, further illustrates the interrelationship of UNC's claims and claims by the utilities. *See, e.g.*, Amended Complaint, Count I, ¶¶ 60, 61, 63.

† *I&M:* UNC sued I&M to avoid performance under the UNC-I&M Contract, alleging that it is excused from performance to I&M on many of the same grounds asserted by UNC in Count II of its Amended Complaint. I&M counterclaimed, seeking specific performance by UNC. *See* Petition, p. 10, n.*.

(Footnote Continued on Page 13)

As both the Tenth Circuit and Judge Frankel recognized (Petition, pp. 11-12, and Appendix E, pp. 4, 6), GAC is in fact subject to a substantial risk of inconsistent adjudications on the same or similar issues. GAC's position is that it is entitled to invoke the aid of the federal courts to assert its claims against UNC in each forum where controversies relating to the subject matter of the Santa Fe litigation will be adjudicated.* Only then can GAC attempt to achieve protection against inconsistent adjudications. The Injunction improperly and unconstitutionally prohibits GAC from seeking such protection in each of the forums having responsibility for a part of the overall controversy. As such, it is an affront to federal supremacy.

Commonwealth: Commonwealth has demanded arbitration against UNC as well as GAC. *See* Petition, pp. 13-14.

Detroit: Detroit has recently cross-claimed against UNC in the Santa Fe action, seeking a declaration that UNC is obligated to deliver uranium to Detroit.

* The Supreme Court of New Mexico in its opinion on remand from this Court recognized GAC's position to be precisely that stated in the text (Petition, Appendix D, pp. 4-5). Although the New Mexico trial court concluded that such future proceedings would be "vexatious, harrassing and multiplicitous", there are no factual findings adequate to support that conclusion. GAC maintains that its intent to join its supplier UNC in any of the uranium contract disputes where GAC is made a defendant by a utility customer cannot as *a matter of law* constitute harrassment by it. In any event, as the dissent in *Donovan* so eloquently pointed out, the Court's holding in *Donovan* makes harassment irrelevant. The state courts in *in personam* actions are simply without power to enjoin a party from resorting to the federal courts.

It is particularly captious for UNC to assert GAC harassment of UNC where (a) UNC originally entered into contracts with each of the utilities; (b) UNC remains directly liable to the utilities on three of the five contracts and guaranteed performance of all of the contracts in question; (c) under the 1973 Uranium Supply Agreement, UNC's obligations to GAC are for the most part defined in terms of GAC's obligations to supply uranium under the utility contracts; and (d) GAC simply seeks to join UNC in proceedings where GAC itself has been sued by a utility. *See* Prior Reply, pp. 7-9.

Conclusion

For the reasons stated above and in GAC's Petition, Prior Petition and Prior Reply, the writ should be granted and the order of the New Mexico Supreme Court summarily reversed.

Respectfully submitted,

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July 27, 1977

APPENDIX A

Excerpt from Answer of General Atomic Company to Amended Complaint

Eighth Defense

Some of the issues in this case are subject to arbitration pursuant to Article XVII of the Uranium Supply Agreement of 1973 (Exhibit 5 to the Complaint). In addition, United is bound by the arbitration provisions of the Duke contract and the two Commonwealth Edison contracts. Commonwealth Edison has demanded arbitration of certain issues pursuant to the arbitration provision of the La Salle Contract. Commonwealth Edison may demand arbitration pursuant to the provisions of the Dresden Contract. Duke has demanded arbitration of certain issues pursuant to the arbitration provision of the Duke Contract. United's obligations to General Atomic may be affected by the resolution of the issues with respect to which Duke and Commonwealth Edison have demanded and may demand arbitration. General Atomic is currently opposing arbitration with both Commonwealth Edison and Duke. United is a party to Commonwealth Edison's arbitration demand and is also opposing that arbitration. General Atomic demands arbitration of only those issues which General Atomic is ultimately required to arbitrate with Duke and Commonwealth Edison pursuant to the above contracts, and which also can be arbitrated jointly among United, General Atomic and the respective utility.

Specifically excluded from the scope of this arbitration demand are all other arbitrable issues, including any concerning the validity and enforceability of the 1973 Uranium Supply Agreement.

To the extent possible, General Atomic Company intends to conduct the arbitration of the issues demanded above jointly with the arbitration of the same issues between the respective power companies and itself.